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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/516,792	03/01/2000	Steven H. M. Wallman	10392/46701	2856
26646	7590	05/19/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			KARMIS, STEFANOS	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/516,792	Applicant(s) WALLMAN, STEVEN H. M.	
	Examiner Stefano Karmis	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-21, 23-29, 31-39, 41-61, 63-84, 86 and 87 is/are rejected.
- 7) ☒ Claim(s) 11, 22, 30, 40, 62 and 85 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*Handwritten signature*

*Handwritten number 2*

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### **DETAILED ACTION**

1. The following communication is in response to Applicant's amendment filed on 22 February 2005.

#### ***Status of Claims***

2. Claims 2, 4 and 56 are currently amended. Claims 1, 3, 5-55 and 57-87 are left as originally filed. Therefore claims 1-87 are pending in this application.

#### ***Response to Arguments***

3. Applicant's arguments regarding claims 1-87, filed 22 February 2005, have been fully considered but they are not persuasive as discussed below. Therefore claims 1-10, 12-21, 23-29, 31-39, 41-61, 63-84, 86 and 87 are rejected as stated in the previous office action, mailed 20 October 2004, and claims 11, 22, 30, 40, 62, and 85 are objected. Applicant's request for allowance is respectfully declined.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 12-19, 24-27, 31-37, 41-59, 63-82, 86, and 87 are rejected under 35

U.S.C. 102(e) as being anticipated by Breen et al. (hereinafter Breen) U.S. Patent 6,615,188.

Claims 1-8, 12-19, 24-27, 31-37, 41-59, 63-82, 86, and 87 stand rejected under 35

U.S.C. 102(e) as being anticipated by Breen et al. (hereinafter Breen) U.S. Patent 6,615,188 as stated in the previous office action, mailed 20 October 2004. Applicant contests that Breen, fails to teach a plurality of contingent orders for the at least one instrument. The Examiner respectfully disagrees. Breen first teaches combining a value-based order for at least one instrument and a share-based order (column 9, lines 18-32). These orders are combined to form a plurality of contingent orders. Orders are aggregated for a designated time period, whereupon a plurality of contingent orders are executed according to the stock. Further, each stock has a plurality of contingent orders, due to the order being executed a plurality of times throughout the day (column 10, lines 1-24). Therefore, Breen clearly teaches forming a plurality of contingent orders for at least one instrument.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 9, 10, 20, 21, 28, 29, 38, 39, 60, 61, 83 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breen et al. (hereinafter Breen) U.S. Patent 6,615,188.

Regarding claims 9, 10, 20, 21, 28, 29, 38, 39, 60, 61, 83 and 84, Applicant submits that these claims aid to determine a schedule of contingent orders. Breen teaches aggregating orders in either direction, and combining buy and sell orders at a given price for a number of shares based on the difference between the aggregated buy order total and sell order total (column 13,

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lines 27-40). Further, Breen teaches previously that fractional shares are rounded up and purchased and the remaining balance of the fractional share is placed in a facilitation account (column 12, line 65 thru column 13, line 2).

### ***Allowable Subject Matter***

9. Claims 11, 22, 30, 40, 62 and 85 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

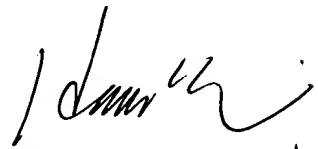
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted  
Stefano Karmis  
12 May 2005

A handwritten signature in black ink, appearing to read 'Hani M. Kazimi', is written over the printed name.

**HANI M. KAZIMI**  
**PRIMARY EXAMINER**